explained to the effect that such determination is ordinarily for the finder of fact, meaning that "juries have the same discretion they have in finding negligence or any other fact." The Court further amplifies the doctrine by stating in *Senko*, 352 U. S. at 374, "The essence of this discretion is that a jury's decision is final if it has a reasonable basis, whether or not the appellate court agrees with the jury's estimate." With this general doctrine we are in full agreement; however, as this court has recently declared, "* * * [T]hat is not to say that there is a question of fact respecting the Jones Act remedy when the admitted facts leave no reasonable room for conflicting ultimate inferences." See *Hill* v. *Diamond*, 311 F. 2d 789, 793 (4th Cir. 1962).

We feel that our disposition of this question in the instant case is controlled by the Supreme Court decision in *Norton* v. *Warner Co.*, 321 U. S. 565 (1944), wherein the Court held that as a matter of law the injured employee was a member of the crew. The only apparent difference between *Norton* and this case before us is that in the former the injured employee received his compensation on a monthly rather than on an hourly basis and performed somewhat less varied duties. There, as here, the vessel was a barge, had no motive power, the employee bought his own meals, had little experience as a seaman and had only incidental navigational duties such as handling lines, responding to the whistles of tugs and posting navigational lights and signals, while his main duties consisted of taking general care of the vessel. Of course, the facts that the "Talcott" had not motive power, no wheel, no rudder, etc., are not strictly pertinent here since it is not disputed that the dredge was a "vessel."

The dredging company attempts to distinguish the *Nor-*

ton case from the instant case on the theory that the claimant in *Norton* was aboard exclusively for navigational purposes; but we are told by the Court in that decision that navigation, in the broad sense in which it is used in these cases, is not confined strictly to the actual navigating or movement of the vessel but "embraces duties essential for other purposes of the vessel," and that a person who at all times contributes to the labors about the operation and welfare of the vessel when she is upon a voyage is engaged in "navigation" and must be considered a member of the crew. It is significant to note that in *Norton* the Court was not sustaining a verdict of a fact finder but was affirming the Circuit Court's reversal of the action of the District Court in upholding a finding of fact; also that the decision in *Bassett*, supra, was expressly considered.

In *Daffin* v. *Pape*, 170 F. 2d 622 (5th Cir. 1948), the court held that the claimant was, as a matter of law, a member of the crew. The shipowner relied upon the *Bassett* case, the claimant upon *Norton*. Referring to the claimant, the court concluded, 170 F. 2d at 625:

> "Daffin was on board the yacht to aid in her navigation; his labors contributed to the accomplishment of the main objectives toward which the vessel was engaged. That he had not signed articles and did not eat and sleep aboard the vessel when it was in port, was of no consequence.
>
> "The duties Daffin was performing when he was injured were duties ordinarly performed by a member of the crew, and we think, as did the judge below, that he must be considered, in law, to have been a member of the Vigilant's crew."

See, also, *Tucker* v. *Branham*, 151 F. 2d 96 (3d Cir.

1945), where the facts were undisputed and the court held, as a matter of law, that the plaintiff was a member of the crew.

In the instant case plaintiff's duties were connected with and contributed to the operation and welfare of the dredge when it was engaged in its assigned function. To paraphrase the language of the Court in the *Norton* case, 321 U.S. at 573, we conclude that only by a distorted definition of the word "crew" as used in the Compensation Act could Lawrence be restricted to the remedy which that Act affords and be excluded from recovery under the Jones Act or be denied relief in admiralty.

We conclude that the District Court did not err in holding, as a matter of law, that plaintiff was a member of the crew.

WAS THE VERDICT EXCESSIVE?

We find no merit in the defendant's second contention that the verdict was excessive. The evidence reveals that although the initial injury consisted principally of a fracture of the femur, complications from the fracture and its treatment produced serious, painful and permanently disabling conditions. The treatment required open reduction involving two surgical procedures during which an intermedullary rod was inserted into the fractured portions of the bone and subsequently removed. The testimony reveals that these procedures caused a great deal of pain and suffering. Complicating the injury and its treatment, plaintiff developed a pulmonary infarct resulting from a thrombophlebitis in the affected leg. The pulmonary infarct resulted in permanent and somewhat disabling scar-

ring of the lung tissue; and the thrombophlebitis has left him with a postphlebitic leg, a permanent, painful condition which the medical evidence reveals will grow progressively worse, and which is adversely affected by the performance of manual labor, the only type of work for which the evidence shows Lawrence to be equipped, he having had only a sixth grade education and no working experience in any other field of endeavor. Furthermore, he was hospitalized for eight months and continued thereafter under a doctor's care for a period of almost four years.

The fact that Lawrence has earned as much or more since his return to work at the same job following the accident as he had earned prior to the accident is strenuously urged as a circumstance to support the contention that the verdict was excessive. However, a comparison of earnings before and after the injuries is not a particularly significant or controlling consideration where there was evidence before the jury to support the conclusion that, under circumstances such as these, the injuries will adversely affect plaintiff's future employment possibilities. See *Wiles* v. *New York, Chicago & St. Louis Railroad Co.*, 283 F. 2d 328 (3d Cir. 1960), *cert. denied*, 364 U. S. 900; *Vaudree* v. *Iron City Sand & Gravel Co.*, 201 F. Supp. 447 (W.D. Pa. 1962), *aff'd*, 315 F. 2d 647 (3d Cir. 1963). We agree with the plaintiff's assertion that the evidence respecting his injuries could have justified a verdict even larger in amount than the one rendered.

Affirmed.